

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA, :
:
v. : CR-08-524 (SJ)
:
JOHN RODDEN, : October 6, 2008
:
Defendant. : Brooklyn, New York
:
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: ROSLYNN R. MAUSKOPF, ESQ.
UNITED STATES ATTORNEY
BY: CHARLES KLEINBERG, ESQ.
ASSISTANT U.S. ATTORNEY
225 Cadman Plaza East
Brooklyn, New York 11201

For the Defendant: MICHAEL DOWD, ESQ.

Audio Operator:

Court Transcriber: ARIA TRANSCRIPTIONS
c/o Elizabeth Barron
31 Terrace Drive, 1st Floor
Nyack, New York 10960
(215) 767-7700

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 THE COURT: Good afternoon, everybody.

2 ALL: Good afternoon, your Honor.

3 THE COURT: Please have a seat and make yourselves
4 comfortable.

5 THE CLERK: Criminal cause for guilty plea.

6 United States of America versus John Rodden, docket number
7 08-CR-542. Counsel, please state your appearances for the
8 record.

9 MR. KLEINBERG: Charles Kleinberg for the United
10 States. Good afternoon, your Honor.

11 MR. DOWD: Michael J. Dowd, D-o-w-d, for the
12 defendant, John Rodden, your Honor.

13 THE COURT: And where's Mr. Rodden?

14 MR. DOWD: Right here, your Honor.

15 THE COURT: Mr. Rodden, do you speak and
16 understand English?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Alright. Essentially, you are now
19 under arrest. You're under arrest because you're in my
20 courtroom with a charge being lodged against you. It's not
21 the traditional police drama on TV form of arrest. But
22 you're, in essence, subject to the authority of the Court.

23 And because you're under arrest, it becomes my
24 responsibility to make sure you understand certain rights
25 that you have.

1 You have the right to remain silent. You don't
2 have to make any statements or answer any questions. And if
3 you were choose to exercise that right, it couldn't be held
4 against you in a court of law by arguing that your silence
5 is evidence of your guilt.

6 On the other hand, if you make statements and
7 they're made to anyone other than your attorney, the
8 prosecutor may learn what you've said and try to use it
9 against you.

10 Do you understand me so far?

11 THE DEFENDANT: Yes.

12 THE COURT: You also have the right to be defended
13 by an attorney. Mr. Dowd, are you appointed or retained?

14 MR. DOWD: Retained, your Honor.

15 THE COURT: And if you couldn't afford an
16 attorney, the Court would appoint a lawyer to defend you at
17 no cost to you.

18 Is it accurate that you've retained Mr. Dowd and
19 you want him to be your lawyer in this case?

20 THE DEFENDANT: Yes.

21 THE COURT: And you have a right to know what
22 you're being accused of but we're going to get to that later
23 in the proceedings that we have ahead of us today. Alright?

24 Are you following me so far?

25 THE DEFENDANT: Yes.

1 THE COURT: Now, the reason that we're here today
2 is that I'm told by your attorney and Mr. Kleinberg that you
3 have made a decision. And that the decision is that you
4 wish to waive your right to indictment and enter a plea of
5 guilty to a charge pursuant to an agreement with the
6 prosecution.

7 THE DEFENDANT: Yeah.

8 THE COURT: Before I can hear any plea of guilty
9 you might choose to offer, I need to make sure that you
10 understand that I am not the judge who is presiding over
11 your case. That is United States District Judge Sterling
12 Johnson.

13 Judge Johnson is the one who will decide whether
14 any plea of guilty you might choose to offer today should be
15 accepted and how your sentence should be determined. I'm a
16 Magistrate Judge not a District Judge like Judge Johnson.
17 And as a result, I lack the authority under the law to
18 formally accept your plea or decide your sentence.

19 If you wish, you have the absolute right to
20 present any plea of guilty you wish to make before Judge
21 Johnson. If that is your preference, there will be no
22 prejudice to you. You'll be permitted to plead guilty on
23 the same terms and conditions being offered to you today on
24 another day that is convenient to Judge Johnson.

25 In the alternative though, if I have your consent

1 and agreement, I do have the authority to be the judge who
2 listens to your guilty plea. And if that is your choice, I
3 will arrange for this entire proceeding to be recorded so
4 that Judge Johnson has a complete record of all the things
5 we've said before he's called upon to decide whether your
6 plea should be accepted or how your sentence should be
7 calculated.

8 Did you follow all of that?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you wish to give up your right to
11 have Judge Johnson listen to your plea and do you agree to
12 proceed instead before me?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you making this decision
15 voluntarily and of your own free will?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you see the form I'm holding up for
18 you or are you not able to see it from that distance?

19 THE DEFENDANT: Yeah, I can see the form.

20 THE COURT: Did you review this form and sign it?

21 THE DEFENDANT: Yes.

22 THE COURT: Before you signed it, did you go over
23 it with Mr. Dowd and understand what you were signing?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Dowd, are you aware of any reason

1 why your client should not consent to proceed before me for
2 these purposes?

3 MR. DOWD: No, Sir.

4 THE COURT: I find the consent of the defendant
5 knowing and voluntary and I add my endorsement to the
6 referral order and consent form to reflect my finding.

7 Mr. Rodden, before I may recommend to Judge
8 Johnson that he accept any guilty plea you might choose to
9 offer, I'm going to have to ask you a lot of questions. The
10 questions are important. They're designed to make sure you
11 understand what a serious decision it is that you're about
12 to make.

13 They are also designed to protect the prosecutor
14 and the Court by creating a record that will show that I
15 explained to you what your rights were, you told me you
16 understood your rights and then you told me you wanted to
17 give up those rights. Once that happens, if you proceed to
18 plead guilty, your plea will be legally valid and
19 permanently binding upon you.

20 I therefore urge you listen carefully to the
21 questions. If I ask you something and you're not sure you
22 understand it, tell me so that I can try to rephrase it and
23 try to make clearer. And if you want to stop at any point
24 because you want to ask me a question or because you would
25 like to have the opportunity to speak privately with Mr.

1 Dowd, all you have to do is tell me and that'll be fine.

2 Are we clear with each other so far?

3 THE DEFENDANT: Yes.

4 THE COURT: It's very important that you tell the
5 truth. I'm going to direct that you be placed under oath.
6 Please rise.

7 (Defendant is sworn)

8 THE COURT: Now that you've taken an oath, when
9 you answer my questions you do so subject to the penalties
10 of perjury or making a false statement if you don't tell me
11 the truth.

12 THE DEFENDANT: Yes.

13 THE COURT: That means if you lie, the prosecutor
14 could bring a new charge against you just for that.

15 Are we clear?

16 THE DEFENDANT: Yes.

17 THE COURT: Tell me your full name.

18 THE DEFENDANT: John Rodden.

19 THE COURT: How old are you?

20 THE DEFENDANT: Fifty-four.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: To high school.

23 THE COURT: Did you finish high school?

24 THE DEFENDANT: Yes. It's different in my country
25 but it's -- yeah.

1 THE COURT: Is English your native language?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you having any difficulty
4 understanding me today?

5 THE DEFENDANT: No.

6 THE COURT: Are you now or have been in the recent
7 past been under the care of a doctor, psychiatrist or other
8 health care professional for any physical or mental
9 problems?

10 THE DEFENDANT: No.

11 THE COURT: In the last twenty-four hours, have
12 you taken any narcotics, drugs, medicine, pills or alcohol?

13 THE DEFENDANT: No.

14 THE COURT: Have you ever in your life been
15 hospitalized or treated for drug or alcohol abuse or
16 psychiatric problems?

17 THE DEFENDANT: No.

18 THE COURT: Is your mind clear today?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you feel healthy, focused and
21 alert?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand everything I've said
24 to you so far?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you received a copy of what we
2 call the information where the charge against you is set out
3 in writing?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you reviewed the document
6 carefully with your attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: In that information you are charged
9 with knowingly and intentionally conspiring or agreeing with
10 other people to defraud the United States between 1997 and
11 1999. And in doing so or in order to do so participating in
12 a scheme to defraud the Internal Revenue Service of taxes
13 that were due and owing as a result of income earned by a
14 company known as Concord.

15 Do you understand what you're accused of in the
16 information?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: This is a felony charge. When I tell
19 you it is a felony charge, what I mean is that it is
20 punishable by more than a year of incarceration.

21 Because the charge is a felony, you have a right
22 under the United States Constitution to have it lodged
23 against you only be return of an indictment by a properly
24 constituted grand jury.

25 This isn't an indictment. This is simply a piece

1 of paper that the -- or a few pieces of paper to be more
2 precise -- that the U.S. Attorney's Office prepared to tell
3 you what they're accusing you of with no grand jury
4 proceeding having been held.

5 Unless you waive your constitutional right to
6 indictment, you cannot be charged with a felony like the one
7 the prosecutor wants to bring against you unless and until a
8 grand jury finds by returning an indictment that there is
9 probable cause to believe that you committed the crime with
10 which you're being charged.

11 If you do not waive your right to indictment, the
12 prosecutor may present the case against you to a grand jury.
13 The grand jury would have at least sixteen members and no
14 more than twenty-three members.

15 At least twelve of the sixteen to twenty-three
16 grand jurors, or more than half, would have to vote that
17 there was probable cause to believe that you committed this
18 crime before you could be indicted for it.

19 If the case went before the grand jury, you might
20 be indicted, you might not be indicted. But if you waive
21 your right to grand jury indictment, that will permit the
22 prosecutor to lodge this charge against you with no grand
23 jury proceeding having ever been held just as though you had
24 been indicted and the case will thereafter proceed as if you
25 had been indicted.

1 Do you understand all the things I've said to you?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you discussed with Mr. Dowd
4 whether you wish to waive your right to grand jury
5 indictment?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you wish to waive your right to
8 grand jury indictment?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have any questions about that?

11 THE DEFENDANT: No.

12 THE COURT: Have you been threatened or pressured
13 or promised anything in return for this waiver?

14 THE DEFENDANT: No.

15 THE COURT: Can you see this form from where
16 you're sitting?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you sign this form?

19 THE DEFENDANT: Yes.

20 THE COURT: Before you signed it, did you review
21 it with Mr. Dowd and understand it?

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Dowd, do you know of any reason
24 why your client should not waive his right to grand jury
25 indictment?

1 THE DEFENDANT: No, Sir.

2 THE COURT: I find the defendants waiver knowing
3 and voluntary. And, once again, I endorse the form
4 reflecting his consent to reflect my finding.

5 Mr. Dowd, have you discussed the matter of
6 pleading guilty carefully with Mr. Rodden?

7 MR. DOWD: Yes, Sir, I did.

8 THE COURT: Does he understand the rights he'll be
9 waiving if he tenders a plea of guilty?

10 MR. DOWD: Yes, Sir, he does.

11 THE COURT: Is he capable of understanding the
12 nature of this proceeding in your judgement?

13 MR. DOWD: Yes, Sir, he does.

14 THE COURT: Do you have any doubt about his
15 competence to offer a guilty plea at this time?

16 MR. DOWD: No, I don't, your Honor.

17 THE COURT: Have you alerted him to the maximum
18 sentence and fine that could be imposed, discussed with him
19 the particular aspects of his agreement that could affect
20 his sentence, alerted him to the way the sentencing
21 guidelines are likely to be calculated and how they might
22 affect that sentence, and also alerted him to restitution
23 possibilities?

24 MR. DOWD: Yes, Sir.

25 THE COURT: Mr. Rodden, have you had an

1 opportunity to review your case very carefully with Mr. Dowd
2 and have you done that?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you had enough time to meet with
5 him that you're satisfied that you wish to proceed today and
6 that you're ready to do so?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you satisfied to have Mr. Dowd be
9 the attorney defending you in this case?

10 THE DEFENDANT: Yes.

11 THE COURT: We've already gone over what the
12 felony information charges you with. Do you have that tax
13 fraud conspiracy charge clearly in your mind?

14 THE DEFENDANT: Yes.

15 THE COURT: You have a right to plead not guilty
16 to that charge. And that's your right whether you committed
17 this crime or not.

18 It's never lying to plead not guilty. Every
19 defendant has the right to say they are not guilty whether
20 they committed the crime with which they're charged or not.

21 Is that clear to you?

22 THE DEFENDANT: Yes.

23 THE COURT: If you were to plead not guilty to
24 this charge, then under the Constitution and laws of the
25 United States you would be entitled to a speedy and public

1 trial by a jury with the assistance of your attorney on all
2 charges pending against you.

3 Is that clear?

4 THE DEFENDANT: Yes.

5 THE COURT: At your trial, you would be presumed
6 to be innocent. The prosecution would be required to
7 overcome the presumption of innocence and to prove that you
8 were guilty by competent evidence and beyond a reasonable
9 doubt.

10 You would have no obligation to prove that you
11 were innocent. If the prosecution failed to prove that you
12 were guilty beyond a reasonable doubt, the members of the
13 jury would have the duty to return a not guilty verdict.
14 And Judge Johnson would so instruct them.

15 Is that clear?

16 THE DEFENDANT: Yes.

17 THE COURT: Yes? You're staying with me?

18 THE DEFENDANT: Yes, I am.

19 THE COURT: That's why juries sometimes return not
20 guilty verdicts even though the members of the jury believe
21 the defendant probably did commit the crime with which he's
22 been charged.

23 Probably is not sufficient to support a guilty
24 verdict. When juries return not guilty verdicts, it doesn't
25 necessarily mean that the jurors have been convinced of the

1 defendant's innocence. Jurors are obligated to find a
2 defendant not guilty unless convinced he is guilty beyond a
3 reasonable doubt.

4 Do you see that difference?

5 THE DEFENDANT: Yes.

6 THE COURT: If you were to proceed to trial, then
7 during your trial the witnesses for the prosecution would be
8 required to come into the courtroom and to present their
9 testimony against you right in front of you and your
10 attorney.

11 Your attorney would have the right to question the
12 prosecution witnesses on cross-examination. Your attorney
13 would have the right to raise objections to evidence the
14 prosecutor attempted to offer against you. And you and your
15 lawyer working together would have the right to call
16 witnesses, present evidence and make arguments to the jury
17 all during the course of the trial.

18 Did you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: At your trial, you, yourself would
21 have the right to testify as a witness in your own defense
22 if you made that choice. But nobody could make you testify
23 at the trial if you preferred not to do it.

24 That's because the United States Constitution says
25 that no one may be required to say anything that is self-

1 incriminating.

2 If you decided that you preferred to remain silent
3 throughout your trial, Judge Johnson would instruct the
4 members of the jury that they could not take your silence
5 into account or hold it against you in any way when they
6 decided upon their verdict.

7 Is that clear to you?

8 THE DEFENDANT: Yes.

9 THE COURT: On the other hand, if you offer a
10 guilty plea and Judge Johnson decides that it is proper and
11 should be accepted, you will, by doing so, be surrendering
12 your constitutional right to trial and each of the other
13 rights I've told you about today.

14 There will be no further trial of any kind. You
15 will have no right to take an appeal from the judgement of
16 guilty that will be entered against you in this case.

17 Judge Johnson will essentially convict you and
18 find you guilty based upon your admission of criminal wrong
19 doing during the proceeding we're holding right now. And
20 that will free the prosecutor of any responsibility to prove
21 anything about what you've done.

22 Is that clear to you?

23 THE DEFENDANT: Yes.

24 THE COURT: If you were to proceed to trial and
25 you were found guilty by verdict of the jury, you would have

1 the right to take an appeal to a higher Court and ask that
2 higher Court to review the legality of all of the
3 proceedings that led up to the conviction.

4 But when you plead guilty, your conviction is
5 based upon the words that you chose to speak yourself.
6 Under that circumstance, there's no right to appeal from the
7 conviction unless you can find some legal flaw in the
8 proceeding that we're holding right now.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If you plead guilty, I will be asking
12 you questions about what you did so that Judge Johnson and I
13 can be satisfied that your guilty plea is based upon facts
14 that really happened.

15 You don't have to answer my questions unless you
16 wish to proceed with your guilty plea. But if you do answer
17 them, and in doing so you admit your involvement in crime,
18 you will, by answering my questions, be surrendering your
19 constitutional right not to incriminate yourself.

20 Did you follow that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you still wish to give up your
23 right to trial and all the other rights I've been describing
24 to you today?

25 THE DEFENDANT: Yes.

1 THE COURT: I'm told you're making this decision
2 pursuant to a written agreement with the prosecution. I
3 have before me an unpaginated agreement. It is eight pages
4 long. It has a handwritten entry three lines up from the
5 top of page two but is otherwise typewritten except for the
6 docket number on page one and the signatures and date upon
7 the final page.

8 I'm going to ask you to look at it now.

9 (Pause in proceedings)

10 THE COURT: Mr. Rodden, do you have Exhibit 1
11 before you?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you recognize this document?

14 THE DEFENDANT: Yes.

15 THE COURT: Is your signature upon its final page?

16 THE DEFENDANT: Yes.

17 THE COURT: Before you signed it, did you read it?

18 THE DEFENDANT: Yes.

19 THE COURT: Did you review it carefully with Mr.
20 Dowd?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you understand what you were
23 signing?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you have any questions about

1 anything in the agreement?

2 THE DEFENDANT: No.

3 THE COURT: Does the written document you're
4 holding in your hands contain a full and accurate statement
5 of everything you and the prosecution have agreed to
6 regarding your case?

7 THE DEFENDANT: Yes.

8 THE COURT: Has anyone promised you anything in
9 return for your guilty plea other than what is written down
10 in that document?

11 THE DEFENDANT: No.

12 THE COURT: Can I have it back, please?

13 (Pause in proceedings)

14 THE COURT: We have already been over the charge
15 that the document contemplates a plea of guilty to. I want
16 to ask a couple of questions about the agreement and its
17 terms before we go forward, though. And I guess I'm
18 directing them primarily to counsel.

19 Mr. Kleinberg has provided me with a limitations
20 waiver document. It is dated September 8, 2008 and proports
21 to waive the limitations period until October 15, 2008.

22 The charges in the information are time barred
23 even if that period is excluded. And I want to make
24 certain, Mr. Dowd, that you and your client are aware that
25 he is either waived in other documents limitations defenses

1 or is doing so by his plea of guilty today if he goes
2 forward with it.

3 MR. DOWD: We have both executed prior documents
4 and executed this document to effectuate a waiver of the
5 statute of limitations up to and through October 15, 2008.

6 THE COURT: Thank you. There is also a reference
7 to restitution in the document. The restitution provision
8 indicates that the defendant is agreeing to make restitution
9 for tax losses over a range of years; 1997 through 2004.
10 That is to say if the original is like the one that --
11 through 2002, excuse me. That is a longer range of years
12 than the substantive offense to which he is being asked to
13 plead guilty.

14 Now, my reading of Section 3663 of Title 18, which
15 governs restitution, and in particular Subsection (a)(3),
16 states that a Court may order restitution in any criminal
17 case to the extent agreed to by the parties in a plea
18 agreement.

19 But I believe that there is at least an argument
20 that otherwise restitution is limited to paying back the
21 losses incurred or gains accrued by virtue of the charged
22 offense.

23 Here, of course, the restitution goes beyond the
24 scope of the charged offense. Has that also been taken into
25 account and considered?

1 MR. DOWD: Yes, your Honor.

2 THE COURT: And it's your advice to your client
3 that he proceed regardless of those issues?

4 MR. DOWD: Yes, your Honor.

5 THE COURT: Thank you. I need to review with you
6 now, Mr. Rodden, the penalties you face if you decide to go
7 forward with your plea of guilty. The statute you're
8 accused of violating authorizes a sentence of imprisonment
9 that could be as long as five years.

10 Is that clear to you?

11 THE DEFENDANT: Yes.

12 THE COURT: In addition, the statute authorizes a
13 term of supervised release that could be as long as three
14 years.

15 Is that clear?

16 THE DEFENDANT: Yes.

17 THE COURT: Supervised release is a period of time
18 that doesn't even start to run until you finish serving any
19 prison sentence that's imposed upon you. Only once you're
20 clear of your prison sentence can you begin to work down the
21 supervised release term that could be as long as three
22 years.

23 Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: Once you're on supervised release,

1 although you won't be in physical custody any longer, you
2 still won't be completely free because you'll have to follow
3 a lot of rules.

4 There are so many I can't even list them all for
5 you. But they will include restrictions on your right to
6 travel freely and requirements that you regularly report to
7 a probation officer, follow the officer's instructions,
8 answer the officer's questions and commit no new crimes at
9 all.

10 Do you understand that nature of supervised
11 release?

12 THE DEFENDANT: Yes.

13 THE COURT: If you break any supervised release
14 rule, even if in doing so you do not commit any new crime,
15 you can be arrested, brought back to the Court and sent back
16 to prison for up to two more years of custody with no credit
17 for the time you spent serving your original sentence or
18 while your freedoms were restricted on supervised release.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: You could be fined as much as a
22 quarter of a million dollars or twice the tax losses you
23 caused by the conspiracy or the amounts you gained from the
24 conspiracy, whichever is greatest.

25 Is that clear?

1 THE DEFENDANT: Yes.

2 THE COURT: You could be required to make
3 restitution of the amounts that were lost by virtue of the
4 offense conduct and by virtue of your agreement even beyond
5 the offense conduct. You could be required to make
6 restitution for tax losses incurred as a result of your
7 actions between 1997 and 2002.

8 Is that clear?

9 THE DEFENDANT: Yes.

10 THE COURT: You will be subject to a \$100 special
11 assessment payment at or about the time you are sentenced.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: Mr. Kleinberg, is it the government's
15 belief that this defendant is a United States citizen?

16 MR. KLEINBERG: I have just learned from the
17 presentence report that he is not. I did not -- I was not
18 aware of that before.

19 THE DEFENDANT: No, I'm a green card holder.

20 MR. KLEINBERG: Oh, thank you. I thought he was.

21 THE COURT: I'm sorry, he's a what?

22 THE DEFENDANT: Resident alien, green card holder.

23 MR. KLEINBERG: That's okay, no. I just learned
24 through the presentence report that he's an LPR. It was my
25 understanding before that he was a citizen. Apparently, I'm

1 incorrect.

2 THE COURT: Well, is this a deport able offense?
3 Is this a crime of moral turpitude? It's a fraud offense,
4 right?

5 MR. KLEINBERG: Yes, it is, your Honor. It is.

6 THE COURT: So, in addition to everything else
7 that we've been discussing, this defendant is subject to
8 deportation based upon his plea of guilty. Is he not?

9 MR. KLEINBERG: That's correct, your Honor.

10 THE COURT: Mr. Dowd, have you had -- If I
11 discerned you conversation with your client correctly,
12 you're learning as well that he's a non-citizen today.

13 MR. DOWD: Yes.

14 THE COURT: Should we have a recess so that you
15 can --

16 MR. DOWD: Yes.

17 THE COURT: -- discuss this matter and its
18 implications?

19 MR. DOWD: Yes.

20 THE COURT: Mr. Kleinberg, I'll leave you the plea
21 agreement and have you amend the penalty provisions.

22 MR. KLEINBERG: I will

23 THE COURT: So that it reflects the scope of
24 penalties the defendant faces. We're reconvene in five
25 minutes.

1 (Pause in proceedings)

2 MR. KLEINBERG: Your Honor, we have just finished
3 our discussion. Let me tell you where we are. We apologize
4 to the Court. We did think, both of us, that he was a U.S.
5 citizen. I noticed he was not in the middle of the colloquy
6 when I reviewed that section of the Pretrial Services
7 report.

8 I think the appropriate thing at this point is for
9 us not to go forward. I think I should be discussing this
10 matter further with the defendant and with his counsel.

11 He has executed -- I don't feel comfortable going
12 forward at this point in light of this new information. And
13 I would like more time to discuss it with them. They have
14 executed an additional waiver of the statute of limitations
15 and I apologize.

16 THE COURT: Okay.

17 MR. DOWD: I think that things, Judge, so that you
18 have some context for this is that Mr. Rodden has been
19 cooperating for a long time.

20 And I assumed he was a citizen. I mean, and
21 because of the speed of things we were doing, I never even
22 got to look at more than the last page of the Pretrial
23 Services report because that's what I focus on. And, so, I
24 didn't see it.

25 But I think we have to have some more discussions.

1 It's a serious matter.

2 THE COURT: Well, it is a serious matter. That's
3 a serious matter. And, frankly, I don't know what he's been
4 doing up until now but even if it's not relevant to what
5 he's permitted to plead guilty to, it's relevant to bail.

6 As I read the Pretrial Services report, I see that
7 virtually all of his family is overseas. And that is
8 certainly relevant to flight risk.

9 MR. DOWD: It has -- Judge, I might say that
10 because of his cooperation here, his activities -- I don't
11 know whether this office but an earlier assistant where we
12 started two or three assistants ago had advised the New York
13 County District Attorney's Office and in that case we had
14 already based on the same contact entered the plea
15 agreement, he had been sentenced and is on probation at the
16 present moment.

17 THE COURT: Yes, I saw that.

18 MR. DOWD: But it's, I think, that none of us
19 foresaw and what I think we want to investigate is what is
20 it that we can do to certainly and that's clearly my intent
21 to prevent what would be a (ui), I think, result for my
22 client in light of what he's done.

23 THE COURT: Well, I'm certainly not going to push
24 a plea forward that counsel are not ready to go forward
25 with. But, it is a little frustrating to frankly spend the

1 time to prepare for and review the restitution question and
2 limitations issues and find out that this kind of basic
3 information is coming forward now after a lengthy
4 relationship between the office and the defendant is pretty
5 core pedigree information that's important.

6 But I'm glad it came out before the plea was
7 finalized and there's time to address it. I mean, frankly,
8 you know, I'm not -- I'm not here to chastise anybody but we
9 can all imagine the consequence if I had asked the question
10 and we went forward and I recommended his plea be accepted
11 and then we were in the position of trying to figure out
12 whether it should be vacated or not on this basis. I don't
13 think the answer is very clear.

14 MR. DOWD: I first discovered it while the
15 colloquy was going on. I would have stood up if it had not
16 come up. I expected it would. I saw it just shortly before
17 it did come up.

18 THE COURT: No, I mean, it might not have come out
19 at all.

20 MR. DOWD: That's correct.

21 THE COURT: If you hadn't reviewed the presentence
22 report carefully, I had an agreed upon bail, we took the
23 plea and then I recommend it be accepted and there we are.
24 So, you know, let's look at it as an opportunity to add
25 something to our check lists.

1 MR. DOWD: Okay.

2 THE COURT: See you next time.

3 THE CLERK: Excuse me, your Honor. Bail (ui).

4 MR. KLEINBERG: Technically it does, your Honor --

5 THE COURT: Well, do we have a case? Are you
6 going to file the information?

7 MR. KLEINBERG: Well, actually, at this point, no,
8 I won't file the -- even though he has been processed, we
9 have not filed the information. So, --

10 THE COURT: There's no charge.

11 MR. KLEINBERG: There's no charge against him at
12 the present so we don't need bail.

13 THE COURT: Mr. -- Right. Mr. Kleinberg, has the
14 7(b) notice been filed?

15 MR. KLEINBERG: The 7(b) notice was filed.

16 THE COURT: Are you prepared to dismiss the case?

17 MR. KLEINBERG: At this point, yes.

18 THE COURT: Case dismissed. Case closed.

19 MR. KLEINBERG: Okay.

20 THE COURT: File an order, you know, get me an
21 order that dismisses the case.

22 MR. KLEINBERG: Okay.

23 THE COURT: So that the clerk can close it. Okay?

24 MR. KLEINBERG: Okay, I will do that.

25 THE COURT: No charges pending. I appreciate your

1 keeping your eye on the ball but I think in this
2 circumstance I have no charge to hold him on so I have no
3 charge to set bail on. He's free. He's not under arrest.
4 He's not got anything that's he's facing.

5 MR. KLEINBERG: I believe I still need the
6 cooperation agreement back even though it's now a dismissed
7 case.

8 THE COURT: You can have it all back.

9 MR. KLEINBERG: Okay, thank you, your Honor.

10 THE COURT: Okay.

11 * * * * *

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in
the above-entitled matter.

A handwritten signature in black ink, appearing to read 'EB', with a long horizontal stroke extending to the right.

ELIZABETH BARRON

January 7, 2009